REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

BRIGHT ALLIANCE ENTERPRISES CORPORATION,
Petitioner,

- *versus* -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9696

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUL 25 2023 10:50AM

x - x

RESOLUTION

MANAHAN, *J.:*

For resolution is respondent's *Motion for Reconsideration* posted on January 18, 2023 and received by the Court on January 26, 2023 with petitioner's *Comment/Opposition to Motion for Reconsideration* filed on April 28, 2023.

Respondent seeks reconsideration of the Court's Decision promulgated on December 13, 2022, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **GRANTED**. Accordingly, the FLD/FANs dated January 12, 2016 for TY 2012, and the WDL dated September 5, 2016, both issued against petitioner, are **CANCELLED** and **SET ASIDE.** Consequently, respondent is **ENJOINED** and **PROHIBITED** from collecting the said amount embodied in the FLD/FANs dated January 12, 2016.
>
> **SO ORDERED**."

Respondent presents the following grounds to warrant the reconsideration of the assailed Decision:

I.

> The Honorable Court erred in ruling that the subject deficiency Tax assessments failed to attain finality and that the protest of Petitioner against the Final Assessment Notice was filed on time.

II.

> The Honorable Court erred in ruling that the subject deficiency Tax Assessments and the subsequently issued Warrant of Distraint and/or Levy are void for violating Respondent's *(sic)* right to due process.

Respondent objects to the conclusion of the Court in the assailed Decision on his supposed admission to the date of receipt of the Formal Letter of Demand and the Final Assessment Notices (FLD/FANs) on January 15, 2016 based on the parties' Joint Stipulation of Facts and Issues (JSFI). He clarifies that this adverted admission in the JSFI as to the date of receipt of the FLD/FANs refers to the service by *registered mail* and does not repudiate his allegation that the same documents were also served earlier by substituted service to petitioner and received by the latter on January 12, 2016. This double service, according to respondent will further prove his vigilance in ensuring that assessment notices are served and received by the taxpayers. Considering that the FLD/FANs were initially received by petitioner on January 12, 2016, respondent asserts that the protest filed on February 15, 2016, was clearly filed beyond the thirty (30) day period prescribed by the law, making the same final and executory.

Respondent also denied that the FLD/FANs were issued in violation of petitioner's right to due process inasmuch as the Preliminary Assessment Notice (PAN) was also served by registered mail to petitioner to its other known business address and received by its authorized representative on December 28, 2015, giving petitioner ample time to respond to said PAN before the FLD/FANs were issued.

In its Comment/Opposition, petitioner initially dismisses the Motion for Reconsideration filed by respondent as *pro-forma* because the issues raised therein were already passed and ruled upon by the Court in the assailed Decision.

Nevertheless, petitioner confronts the issues raised in the Motion by stating that respondent failed to properly serve the FLD/FANs dated January 12, 2016 as it was sent to a Mister

Donut stall located in Farmers Plaza, Cubao, Quezon City, owned and operated by a franchisee. Further, the individual named Mark Anthony J. Mainit who allegedly received the FLD/FANs, is neither its authorized representative nor an employee of the company.

As regards the receipt of the PAN, petitioner denied ever having received it on December 28, 2015 as alleged by respondent.

Petitioner contends that the subject FLD/FANs and the subsequently issued Warrant of Distraint and/or Levy (WDL) are violative of its right to due process because respondent failed to observe the fifteen (15) day period to protest the PAN and thus prematurely issued the FLD/FAN on January 12, 2016.

RULING OF THE COURT

We find no merit in respondent's Motion for Reconsideration as the principal arguments therein were already substantially passed upon and detailedly scrutinized and resolved in the assailed Decision.

Nevertheless, the factual issues raised by respondent merit a second look at the records of this case.

Respondent alleges that the FLD/FANs were served to petitioner by substituted service on January 12, 2016 *prior* to its service thereof by registered mail.

It is worthy to point out that the issue on the date of receipt by petitioner of the FLD/FANs was already settled and remains to be an undisputed fact based on the parties' JSFI filed on July 19, 2018.[1] We quote the relevant portion of the JSFI, thus:

> "4. **On 15 January 2016, petitioner received the Formal Letter of Demand (FLD) dated 12 January 2016**, wherein respondent assessed petitioner for deficiency income tax and VAT in the total amount of Eleven Million Six Hundred Fourteen Thousand Eight Hundred Eighty Pesos and Eighty Three Centavos (P11,614,880.83), inclusive of interest.

[1] Court Docket, pp. 225- 232.

> Respondent served the FLD at 3/F Farmer's Plaza, Cubao, Quezon City.
>
> 5. **On 15 February 2016**, petitioner filed its formal Protest to the FLD." (emphases supplied)

Similarly, the allegation of respondent that petitioner received the PAN on December 28, 2015 contravenes the admissions of the parties in their JSFI that the PAN was received by petitioner on January 6, 2016, and we quote, thus:

> "3. **On 06 January 2016, petitioner received the Preliminary Assessment Notice (PAN) dated 21 December 2015**, wherein respondent assessed petitioner for deficiency income tax and value-added tax (VAT) in the total amount of Eleven Million Four Hundred Ninety-One Thousand Six Hundred Ten Pesos and Ninety One Centavos (P11,491,610.91), inclusive of interest."

These same stipulated facts and issues of the parties were formalized and included in the Pre-Trial Order of the Court dated August 10, 2018.[2]

Section 7, Rule 18 of the 1997 Revised Rules of Civil Procedure as amended by A.M. No. 19-10-20-SC provides that the contents of the pre-trial order shall control the subsequent proceedings, unless modified before trial.

A pre-trial order, explicitly defines and limits the issues to be tried and is binding upon the parties. Pre -trial is an essential device for the speedy disposition of cases. Hence, parties cannot brush it aside as a mere technicality.[3]

The Supreme Court, in the case of *Licomcen vs. Abainza*,[4] emphasizes that one of the purpose of a pre-trial order is to limit the issues for the resolution of the Court, thus:

> "**The non-inclusion of this belated defense in the pre-trial order barred its consideration during the trial**. To rule otherwise would put the adverse party at a disadvantage since he could no longer offer evidence to rebut the new theory. Indeed, parties are bound by the delimitation of issues during pre-trial." *(emphasis supplied)*

---

[2] Court Docket, pp. 234-241.
[3] *Silvestre Tiu vs. Daniel Middleton and Remedios Middleton*, G.R. No. 134998, July 19, 1999.
[4] G.R. No. 199781, February 18, 2013. *am*

The assailed Decision even treated the stipulated facts as judicial admissions binding on the parties, and we quote:

> "The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. A judicial admission binds the person who makes the same, and absent any showing that this was made thru palpable mistake, no amount of rationalization can offset it."

Accordingly, the Court in the assailed Decision ruled that the FLD/FANs did not become final and executory as the protest was filed within the thirty (30) day period provided by Section 228 of the 1997 National Internal Revenue Code (NIRC), as amended. We again quote the assailed Decision, to wit:

> "Thus, considering that the date of receipt of the subject FLD/FANs was on January 15, 2016, petitioner had thirty (30) days therefrom or until February 14, 2016 to file its protest, and sixty (60) days thereafter, within which to submit all relevant supporting documents, in accordance with Section 228 of the 1997 NIRC, as amended, xxx xxx
>
> xxx xxx xxx
>
> It was established in this case that on February 15, 2016, petitioner filed its protest to the FLD/FANs; and that on April 15, 2016, petitioner submitted supporting documents to respondent.[5] However, while it may be true that it is only on **February 15, 2016** that the said protest was filed with the BIR, the same is of no moment. This is so because Section 28 (Chapter 7, Book I) of the Executive Order No. 292, series of 1987, otherwise known as the Administrative Code of 1987, reads as follows:
>
> 'Section 28. *Pretermission of Holiday.* – Where the day, or the last day, for doing any act required or permitted by law falls on a regular holiday or special day, the act may be done on the next succeeding business day.'
>
> It is to be noted that February 14, 2016—the 30th day within which to file a protest under Section 228 of the 1997 NIRC, as amended, fell on a Sunday. Such being the case and on the basis of the foregoing provision, petitioner's filing of its protest to the FLD on February 15, 2016 (Monday), the next succeeding business day, is considered timely made. xxx xxx."

---

[5] Par. 6, Summary of Admitted Facts, JSFI, Docket, p. 226; Exhibit "P-5", Docket, pp. 166 to 168. 𝓂

The Court then concluded that the issuance of the deficiency tax assessments against petitioner for taxable year 2012 within the fifteen (15) day period to respond to the PAN is considered a violation of petitioner's right to due process citing the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Avon Products Manufacturing, Inc.*[6] We again quote hereinbelow the relevant potions of the assailed Decision, thus:

> In the present case, it is indisputable that petitioner received the PAN dated December 21, 2015 on January 6, 2016.[7] Applying the above-quoted Section 228 of the 1997 NIRC, as amended, in relation to Section 3.1.1 of RR No. 12-99, as amended by RR No. 18-2013, respondent must give petitioner a period of fifteen (15) days from date of receipt of the PAN, or until January 21, 2016, to protest or respond to the PAN. Pursuant to these provisions, it is only after the lapse of the said period that respondent may issue the FLD/FANs, calling for the payment of the assessed deficiency tax liabilities.
>
> By prematurely issuing the FLD/FANs on January 12, 2016, without awaiting the lapse of the fifteen (15)-day period, respondent wantonly disregarded the mandatory due process requirement laid down under the above-stated law and rules."

Finding no errors in the assailed Decision, the Court sees no cogent reason to reverse the same.

WHEREFORE, premises considered, the *Motion for Reconsideration* filed by respondent is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

---

[6] G.R. Nos. 201398-99 and 201418-19, October 3, 2018.
[7] Par. 3, Summary of Admitted Facts, JSFI, Docket, pp. 225 to 226. Refer also to Exhibit "P-2", Docket, pp. 140 to 144; Exhibit "R-3", BIR Records, pp. 210 to 214.

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

(on official business)
MARIAN IVY F. REYES-FAJARDO
Associate Justice